

Judge Vaidik, cont.

range of honors including the 1996 Indiana Domestic Violence Coalition Judge of the Year and the 1997 Indiana Judges Association Special Merit Award.

Judge Vaidik was appointed to the Court of Appeals in February 2000 by Governor Frank O'Bannon and was retained by election in 2002 and 2012. Because Judge Vaidik sees the Court of Appeals at the intersection of theoretical and practical law, she believes the Court should embody the highest degree of fairness and impartiality.

This view informs her passion for teaching, as she feels that Hoosiers, and all litigants, deserve the finest possible legal advocates on their behalf. Judge Vaidik also believes that legal writing must be distinguished by logical construction and clear, explanatory prose.

She is an adjunct professor at the Indiana University Maurer School of Law and won its 2011 Adjunct Professor of the Year Award. She has served as a visiting professor at the College of Law of England and Wales and taught as an adjunct professor at Valparaiso University Law School. She has taught at many law schools and for a number of organizations including the Indiana State Bar Association, the Indiana Legal Education Forum, and the Indiana Judicial Center.

Judge Vaidik has trained lawyers involved in prosecuting Rwandan war

crimes, Mexican lawyers prosecuting drug lords, and solicitor advocates seeking the rights of audience in the High Courts in Belfast, Northern Ireland. She is particularly proud of her long association with the National Institute of Trial Advocacy, which honored her with its 2007 Robert Keeton Faculty Award.

Despite her Court of Appeals caseload and her teaching, Judge Vaidik is also actively involved in a wide variety of community, legal, and judicial organizations. She served on the State of Indiana Children's Peak Performance Commission and has held many posts with the Indiana Judges Association and Indiana Judicial Center. She has been chairperson of the Judicial Education and Community Relations Committees of the Indiana Judicial Center and is a member of the American Bar Association, Indiana State Bar Association, and Sagamore Inns of Court.

She has received many other awards and honors including the 2004 Indiana State Bar Association's Women in Law Achievement Award, the 2007 Indiana Lawyer Distinguished Barrister Award, the 2003 Paragon of Justice Award from Valparaiso University Law School, and the Sagamore of the Wabash Award from two Indiana governors.

Judge Vaidik and her husband are the proud parents of twin daughters, one a medical doctor and one a lawyer, and they have two grandsons, who can choose either profession.

Judge Bradford, cont.

Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference.

He is a Senior Distinguished Fellow of the Indianapolis Bar Association and has taught ICLEF seminars on trial practice for more than 10 years. From 2005 to 2007, Judge Bradford hosted "Off the Bench with Judge Cale Bradford," a legal commentary program on Marion County's government access network. He also served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary's policies on technology and electronic case management. Judge Bradford currently serves as an adjunct instructor in forensic science and the law at Indiana University Purdue University Indianapolis.

Judge Bradford is a former director of Indianapolis's John P. Craine House, a residential alternative to incarceration for women offenders with pre-school-aged children. Judge Bradford regularly attends St. Luke's United Methodist Church. He and his wife, a full-day kindergarten teacher, have five children.

Judge Crone, cont.

Judge Crone was retained on the Court by election in 2006. He is married and has three daughters – a practicing attorney, an anesthesiologist and a doctor of psychology.

SYNOPSIS

The parties will present arguments pertaining to whether the trial court erred in denying Appellant-Defendant Scott A. Criswell's motion to dismiss.

At all times relevant to this appeal, Criswell was a sergeant with the Fort Wayne Police Department ("FWPD").

Criswell allegedly attended a party at the home of another Fort Wayne police officer on Aug. 10, 2013.

While at the party, Criswell and the wives of two other Fort Wayne police officers are alleged to have forcibly entered a nearby home and removed certain items from the property.

Appellee-Plaintiff the State of Indiana (the "State") subsequently charged Criswell with Class A misdemeanor criminal conversion and Class A misdemeanor criminal trespass.

Criswell subsequently filed a Motion to Dismiss and/or Suppress, arguing that the criminal charges against him should be dismissed because the charges were brought in violation of his Fifth Amendment privilege against self-incrimination, as well as the legal protections enunciated by the United States Supreme Court in *Garrity v. New Jersey* and *Kastigar v. United States*. Following a hearing, the trial court denied Criswell's motion.

This *interlocutory* appeal involves the question of whether those United States Supreme Court opinions prohibit the State from using a statement collected during an internal investigation by the FWPD into actions allegedly committed by Criswell as evidence against Criswell in connection to criminal charges brought against him.

On appeal, Criswell challenges the trial court's denial of his Motion to Dismiss and/or Suppress, arguing that the criminal charges against him should be dismissed because the charges were brought in violation of his Fifth Amendment privilege against self-incrimination, as well as in violation of the legal protections enunciated by the Supreme Court in *Garrity* and *Kastigar*.

Court of Appeals of Indiana

*Hearing oral argument at
North Central High School
Wednesday, Sept. 23, 2015 @ 1 p.m.*



Criswell v. State
02A03-1501-CR-22

*On Appeal from Allen Superior Court
The Honorable Wendy Davis, Judge*

Notable quotations about justice and the law

The complete independence of the courts of justice is peculiarly essential in a limited Constitution.

- Alexander Hamilton, *Federalist 78*

It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.

- Chief Justice John Marshall

Whatever disagreement there may be as to the scope of the phrase "due process of law" there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard.

- Justice Oliver Wendell Holmes, Jr.

The ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it.

- Justice Felix Frankfurter

Law matters, because it keeps us safe, because it protects our most fundamental rights and freedoms, and because it is the foundation of our democracy.

- Justice Elena Kagan

Most high courts in other nations do not have discretion, such as we enjoy, in selecting the cases that the high court reviews. Our court is virtually alone in the amount of discretion it has.

- Justice Sandra Day O'Connor

Restriction on free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us.

- Justice Thurgood Marshall

It is the spirit and not the form of law that keeps justice alive.

- Chief Justice Earl Warren

The job of a judge is to apply the law. And so it's not the heart that compels conclusions in cases. It's the law. The judge applies the law to the facts before that judge.

- Justice Sonia Sotomayor

The day you see a camera come into our courtroom, it's going to roll over my dead body.

- Justice David Souter

Fast Facts
About the Court of Appeals

- The Indiana General Assembly created a temporary appellate court in 1891 and a permanent Appeals Court in 1901. In 1971, voters approved a constitutional amendment making the Court of Appeals of Indiana a constitutional court.
- The Court hears cases in three-judge panels that rotate three times per year. Cases are never assigned to a single judge, and all cases are randomly assigned.
- Including judges serving senior terms, 135 judges have served the Court since its inception. Their photos are displayed against the north wall of the Statehouse on the fourth floor. Judge James B. Black (1838-1916) was the Court’s first chief judge.
- Judge Robert R. Altice, Jr., is the court’s newest judge. He took the oath of office on Sept. 2, 2015.
- Because the Indiana Constitution provides “an absolute right to one appeal,” the Court of Appeals considers more than 2,000 cases each year. The Indiana Supreme Court need not consider every appeal, so it decides about 100 cases per year.
- Eight women and three African Americans have served on the Court. Current Chief Judge Nancy H. Vaidik is the court’s second female chief judge.
- The court decides most cases without holding oral argument. In 2014, for example, the court issued 2,146 majority opinions and heard 69 oral arguments.
- The court considers and decides about twice as many criminal cases as civil cases each year.
- The Court of Appeals affirmed trial court decisions in 82 percent of its cases in 2014. By case type, the affirmation rate was 88 percent of criminal cases; 92 percent of post-conviction relief petitions; and 69 percent of civil cases.

Attorneys for the Parties

For the Appellant

John F. Kautzman is a lifelong Indianapolis resident who graduated from **North Central High School** in 1977, from Indiana University in 1981 and from IU’s Robert H. McKinney School of Law in 1984. He joined the Ruckelshaus law firm in 1985 and also served as a Circuit Court commissioner for several years. Mr. Kautzman is admitted to practice in all Indiana state and federal courts. His practice includes both civil and criminal litigation, and he has served as lead counsel on a number of high profile state and federal court jury trials, including the first televised federal court jury trial in Indiana history. He has also successfully appeared before the Court of Appeals of Indiana and Indiana Supreme Court for oral argument. He speaks frequently at seminars and is a faculty member of the Trial Advocacy Skills College of the Indiana Continuing Legal Education Forum. Mr. Kautzman was elected as a fellow of the American College of Trial Lawyers, a nationwide, invitation-only honor limited to 1 percent of the lawyers in any state. He is also listed in the prestigious “Best Lawyers in America.”

For the Appellee

Ian McLean is a Crawfordsville native who joined the Office of the Indiana Attorney General in 2007 as a Deputy AG in Criminal Appeals. He has argued 14 times before the Indiana Supreme Court and many times before the Court of Appeals of Indiana. He earned a BA in History from Grinnell College, IA in 1985 and his law degree in 1988 from Indiana University School of Law-Bloomington. Before joining the AG’s office, he engaged in the general practice of law as a solo practitioner from 1994-2006. His published articles include “The Fuzzy Picture of *Hitler’s Pope*,” in Political Science Reviewer 32 (2003), and "Criminal Law and Natural Law," *Common Truths* (ISI Books 2000). Mr. McLean has been an instructor at the Office of Attorney General’s Mexican/American Law Conferences. He is admitted to practice in U.S. District Court for the Northern and Southern Districts of Indiana.

What happens after oral argument?

After oral argument, a designated “writing judge” drafts an opinion for the others to consider. Generally, opinions affirm or reverse lower court rulings in whole. But some affirm in part, reverse in part, or both. Not infrequently, the opinion instructs the trial court about next appropriate steps. Many opinions are unanimous, although non-unanimous opinions (2-1) are not uncommon. Judges sometimes write separate concurring or dissenting opinions that emphasize different points of law or facts than the main opinion. Parties can appeal Court of Appeals decisions to the Indiana Supreme Court by filing a petition to transfer. But transfer is not automatic; the Supreme Court can grant or deny transfer with or without giving a reason. If the petition is denied, the Appeals Court decision stands.

Today’s Panel of Judges



**The Honorable
Terry A. Crone**
St. Joseph County

Terry A. Crone was appointed to the Court of Appeals March 8, 2004 by Governor Joseph E. Kernan. Judge Crone was raised in South Bend. He graduated cum laude from DePauw University with a double major in political science and history in 1974 and graduated from Notre Dame Law School in 1977. Judge Crone practiced law for nine years, concentrating in areas of civil practice, and served as the St. Joseph County Attorney from 1981 to 1986. In 1986, he was appointed Magistrate of the St. Joseph Circuit Court, where he served until his appointment as Judge of the St. Joseph Circuit Court in 1989. Judge Crone is a past President of the St. Joseph County Bar Association and a former member of the Board of Managers of the Indiana Judges Association, the Supreme Court Committee on Character and Fitness, and the Alternative Dispute Resolution Committee of the Indiana Judicial Conference. Judge Crone is a past Chair of the Appellate Practice Section of the Indiana State Bar Association and is a member of the St. Joseph County, Indianapolis, Marion County, Indiana State and American Bar Associations, the American Judicature Society, and the Phi Delta Phi Honorary Legal Society. Judge Crone is a frequent speaker at legal education programs. He helped found a program in South Bend to familiarize minority high school students with the law and related fields and was a founding member of the South Bend Commission on the Status of African-American Males and the St. Joseph County Coalition Against Drugs. As Circuit Court judge, he also initiated the first Spanish-speaking program for public defenders in St. Joseph County.

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**The Honorable
Nancy H. Vaidik**
Porter County

Nancy H. Vaidik is a judge and a teacher with broad experience in both trial and appellate courts and in legal classrooms. She has an expertise in trial advocacy and appellate advocacy, with a strong background in the rules of evidence and legal mediation. Judge Vaidik was selected by her colleagues as **chief judge** of the Court of Appeals for a three-year term beginning Jan. 1, 2014. Judge Vaidik grew up in Portage, IN, and is a sixth-generation Hoosier who retains strong ties to her home town. She graduated with high distinction from Valparaiso University in 1977, with a double major in political science and psychology, and then studied at Valparaiso University Law School, where she earned her Juris Doctor in 1980. Her early years as deputy and then chief deputy Porter County prosecutor provided the grounding for her judicial career. As an attorney, she tried over 75 jury trials and founded the Porter County Victims Assistance Unit, the Porter County Sexual Assault Recovery Project, the Domestic Violence Service, and the Valparaiso University Law School Mediation Clinic. She also served on the Porter County Community Corrections Board and led a countywide task force that spearheaded the eventual construction of a new county jail. After serving as a prosecutor, she went into private practice and specialized in domestic relations, probate, municipal law, and general litigation. She represented Caring Place, Inc., a shelter for battered women in Valparaiso. From 1992 to 2000, she served as the judge of the Porter Superior Court. During her tenure on the trial court, Judge Vaidik was awarded a wide

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**The Honorable
Cale J. Bradford**
Marion County

Cale J. Bradford was appointed to the Court of Appeals by Governor Mitch Daniels and took his seat on August 1, 2007. Prior to his elevation to the Court of Appeals, Judge Bradford served for more than 10 years as Judge of the Marion Superior Court, seven years in the criminal division and three in the civil division. He was twice elected presiding judge by his colleagues. During this tenure, Judge Bradford chaired the Marion County Criminal Justice Planning Council, a group of local elected and appointed officials who recommended ways to improve the county’s response to criminal justice problems, including jail overcrowding, staffing, and budget issues. His efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county’s Juvenile Detention Center. Before joining the bench, Judge Bradford served in the Marion County Prosecutor’s Office for two years, overseeing a staff of more than 100 attorneys. For five years, he was an Assistant United States Attorney for the Southern District of Indiana, prosecuting major felony drug trafficking cases. He engaged in the private practice of law from 1986 to 1991, and served as both a deputy prosecutor and public defender during his career. A native of Indianapolis, Judge Bradford received a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D. from Indiana University-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and a former member of both the Indiana

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